

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RICHARD A. JONES,

Plaintiff,

Civil Action No. 13-CV-00449

Hon. Janet T. Neff

Mag. Judge Ellen S. Carmody

v

NATIONSTAR MORTGAGE, LLC,
and TROTT & TROTT, P.C.,

Defendants.

Richard Jones
Plaintiff, In pro per
1823 E. Main St.
Niles, MI 49120
(574) 238-5617

Trott & Trott, P.C.
By: Josie Lewis (P69317)
Attorney for Defendants
31440 Northwestern Highway, Suite 200
Farmington Hills, MI 48334
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**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO
AMEND COMPLAINT**

NOW COMES Nationstar Mortgage LLC and Trott & Trott, P.C. by and through
their attorneys, Trott & Trott, P.C., by Josie Lewis and for its response to Plaintiff's Motion
for leave to file amended complaint states as follows:

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TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	ii
FACTS.....	1
LEGAL ARGUMENT.....	1-2
CONCLUSION.....	3
CERTIFICATE OF SERVICE.....	3

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INDEX OF AUTHORITIES

Cases

<i>Beaner v. United States</i> , 361 F. Supp. 2d 1063, 1067 (D.S.D. 2005).....	1
<i>Bowles v Oakman</i> , 246 Mich 674, 225 NW2d 613 (1929).....	2
<i>Livonia Prop Holdings, LLC v 12840-12976 Farmington Rd Holdings, LLC</i> , 717 F Supp 2d 724, 736 (ED Mich 2010), reconsideration denied (June 14, 2010).....	1
<i>Livonia Properties Holdings, LLC v 12840-12976 Farmington Rd Holdings, LLC</i> , 399 Fed Appx 97 (2010) cert den 131 S Ct 1696 (2011).....	1,2
<i>Long v City of Monroe</i> , 265 Mich 425, 441; 251 NW 582 (1934).....	2
<i>Martinez v. Safeway Stores, Inc.</i> , 66 F.R.D. 446 (N.D. Cal. 1975).....	1
<i>Wrath v Seldin</i> , 422 US 490; 95 S Ct 2197 (1975).....	2

Federal Rules

Fed. R. Civ. P. 15(a).....	1
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Miscellaneous

6A C.J.S Assignments § 132.....	2
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FACTS

Plaintiff filed the instant action on March 27, 2013 which was later removed to this Court. Plaintiff is challenging the mortgage and mortgage foreclosure sale. The Plaintiff now seeks to amend his complaint to include a new claim that an unlawful assignment occurred. This amendment would be futile because the Plaintiff lacks standing to challenge an assignment.

LEGAL ARGUMENT

Amendments of pleadings are governed by Federal Rule of Civil Procedure 15(a). It is implicit in Rule 15 that plaintiff may amend his complaint only to add matters that would otherwise have been proper to include in original complaint. *Martinez v. Safeway Stores, Inc.*, 66 F.R.D. 446 (N.D. Cal. 1975).

Factors to consider in determining whether leave to amend should be granted include but are not limited to: (1) whether the motion was filed in bad faith or with dilatory motive; (2) whether the motion was filed with undue delay; (3) whether leave to amend would be unduly prejudicial to the opposing parties; and (4) **whether the proposed amendment would be futile.** *Beaner v. United States*, 361 F. Supp. 2d 1063, 1067 (D.S.D. 2005).

The Plaintiff seeks to add a new claim that the assignment was unlawful however the law is clear that Plaintiff/Jones cannot challenge an assignment.

In *Livonia Prop Holdings, LLC v 12840-12976 Farmington Rd Holdings, LLC*, 717 F Supp 2d 724, 736 (ED Mich 2010), reconsideration denied (June 14, 2010), aff'd sub nom. *Livonia Properties Holdings, LLC v 12840-12976 Farmington Rd Holdings, LLC*, 399 Fed Appx 97 (2010) cert den 131 S Ct 1696 (2011), the United States District Court held **that the borrowers lacked standing to challenge the assignments and that "a debtor ...**

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cannot raise alleged acts of fraud, or question the motive or purpose underlying an assignment.” *Id.* at 736, citing 6A C.J.S Assignments § 132. The *Livonia* Court relied upon the United States Supreme Court and the Michigan Supreme Court for guidance. Specifically, the *Livonia* Court looked to the United States Supreme Court *Wrath v Seldin*, 422 US 490; 95 S Ct 2197 (1975) for the proposition that a party must assert its own legal rights and interests and cannot assert the rights of third parties. *Id.* at 498-99.

The *Livonia* Court also relied upon the Michigan Supreme Court’s holding in *Bowles v Oakman*, 246 Mich 674, 225 NW2d 613 (1929). There, the Supreme Court held that a borrower cannot assert claims that arise between the assignor and the assignee. *Id.* at 679. In *Long v City of Monroe*, 265 Mich 425, 441; 251 NW 582 (1934), the Court held that “where a corporation has authorized or ratified the signature of its name in such manner as to bind the corporation itself...the signature cannot be disputed by any third party for the purpose of invalidating the [document] which the corporation itself cannot or does not attack.” In this case, Plaintiff, Richard Jones is not a party to the assignment; therefore, he cannot challenge the validity of the assignment. Neither Mortgage Electronic Registration Systems Inc. nor Nationatar Mortgage LLC are disputing or challenging the assignment and Jones, as a mere third-party, has no basis to attack the transaction. As such, this claim has no merit and allowing Plaintiff to amend his complaint to include this claim would be futile.

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CONCLUSION

Based on the above, the Defendant requests that this deny the motion for leave to amend complaint and grant any other relief that this court deems equitable and just.

Respectfully submitted,
TROTT & TROTT, P.C.

Dated: June 24, 2013

/s/ Josie Lewis
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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2013, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which electronically sent copies of same to all ECF participants, and a copy was mailed to:

Richard A. Jones
1823 E. Main St.
Niles, MI 49120

Dated: June 25, 2013

Respectfully Submitted,
TROTT & TROTT, P.C.

/s/Josie Lewis
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